

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Election/Restrictions

1. Applicant's election without traverse of Group I and species as shown in figures 1-3 in the reply filed on 10/08/2009 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-14, 16, and 36-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lerman (US 4338937) in view of Uecker (US 3893651).

Lerman discloses substantially as claimed including an elongated cannula 42 having a distal end which can be used for placement on one side of the tissue boundary and a trocar base 44 disposed at the proximal end of the cannula 42, with a trocar lumen 46 extending axially of said base from a proximal end thereof to said distal end of the cannula 42; a magnet 52 in said base capable of having a predetermined strength for holding a distal end of an elongated surgical instrument in place in alignment with the lumen 46; and wherein the magnet 52 comprises an annular disc disposed at said proximal end of the base surrounding

said lumen 46. However, Lerman does not explicitly disclose the magnet 52 comprises an annular disc and the trocar cap having lumen and a funnel-shaped disposed therein.

Uecker teaches that it is known in the surgical art to have magnet 38 comprises an annular disc and the trocar cap 24 having lumen 32 and a funnel-shaped 30 disposed therein.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the cap of Lerman with an annular disc magnet and the trocar cap having lumen and a funnel-shaped disposed therein as taught by Uecker such that the magnetic field is sufficient to hold and guiding surgical instruments in the cap access port while in use.

Response to Arguments

4. Applicant's arguments, see remarks, filed 03/14/2010, with respect to the rejection(s) of claim(s) 1-14, 16, and 36-46 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lerman (US 4338937) and Uecker (US 3893651).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Kevin T. Truong/
Primary Examiner, Art Unit 3734

Kevin T. Truong
Primary Examiner
Art Unit 3734